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**BEFORE THE
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.**

DEPT. OF TRANSPORTATION
DOCKETS

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**Security Considerations in the Design of the Flightdeck on Transport
Category Airplanes**

Docket No. FAA-2001-11032; Amendment No. 25-106 and 121-288 - 35

COMMENTS OF THE CARGO AIRLINE ASSOCIATION

By publication in the January 15, 2002, edition of the *Federal Register*, 15 *Fed. Reg.* 2111; 15 *Fed. Reg.* 2117, the Federal Aviation Administration published several rules designed to address the issue of unauthorized access into the flightdecks of transport category aircraft. These rules were enacted in direct response to the terrorist events of September 11, 2001, and pursuant to the mandates of the Aviation and Transportation Security Act (P.L. 107-71) enacted by the United States Congress (hereinafter "ATSA"). They were published as Final Rules in accordance with the provisions of the section 104(a) of ATSA. The following Comments on this rule are submitted by the Cargo Airline Association pursuant to the provisions in the Rulemaking.

The Cargo Airline Association is the nation-wide trade organization representing the interests of the airlines operating all-cargo equipment. A current airline membership list is attached hereto as Appendix A. Each of our members is potentially significantly impacted by this rule. Our members fully agree that, in the light of the September 11, 2001, tragedies,

appropriate steps must be taken to ensure the enhanced safety of flightdeck personnel and the public at large, and further that the FAA or Transportation Security Administration (TSA) must enact mandatory provisions to guarantee that all industry members take the steps necessary to provide appropriate safeguards. At the same time, we also urge that any steps mandated be specifically tailored to address the threat posed by each industry segment and that the requirements of both ATSA and the Administrative Procedures Act, 5 U.S.C. § 553, be followed in enacting these Rules.

Background and Statutory Requirements

The events of September 11, 2001, radically altered the landscape of threats to the United States aviation industry. For the first time, American civil aircraft were used as means of destruction, as hijackers broke into the flightdecks of four separate aircraft and attempted to fly these aircraft into designated civilian targets. In the aftermath of these tragedies, Congress correctly recognized that more must be done to protect flight crews from unauthorized intrusion into the flightdeck area. Accordingly, section 104 of ATSA specifically addressed the cockpit security issue. It mandated that unauthorized persons were not to be allowed into the cockpits “of aircraft engaged in passenger air transportation. . .” (section 104(a)(1)(A)) and further that the doors on “such aircraft” have rigid doors “in a bulkhead between the flightdeck and the passenger area to ensure that the door cannot be forced open from the passenger compartment” (section 104(a)(1)(B)). Congress further provided that the rules enacted to implement these requirements be promulgated without regard to the provisions of the Administrative Procedures Act which would normally require Notice and Opportunity to Comment **before** finalization of any rule.

From an all-cargo perspective, it is important to note what ATSA did not require. The specific flightdeck provisions of section 104 did not apply to all-cargo aircraft and the authority to issue final rules in the flightdeck area did not extend beyond the mandates of section 104. These exclusions were not an oversight, but rather a recognition that the threats to aircraft that carry cargo, not passengers, is significantly different from those that operate in passenger service.

The FAA Rulemaking and the Cargo Airline Association Response

In spite of the fact that the flightdeck door rules issued herein were issued by the Flight Standards Division of the FAA, it is clear that the only real subject is aircraft security. Absent the events of September 11, and the consequent examination of the security implications of the terrorist acts, these rules would probably never have been promulgated. Because of this perceived need to increase flightdeck security across the broad spectrum of aviation operations, members of the industry may be subject to service disruptions as retrofits are made, and certainly will be subject to substantial security-related costs. While the FAA estimates the cost per aircraft to be \$12-17,000 for aircraft already equipped with doors, industry estimates indicate that the range of cost options is actually approximately twice the amounts stated. Moreover, if the requirements are extended to aircraft that presently are not equipped with flightdeck doors, the cost per aircraft will approach \$100,000. In the aggregate, these amounts are not insubstantial, especially in view of the ongoing financial pressures experienced by the industry.

When the process of altering flightdeck doors was originally initiated, the Government committed federal funds to passenger carriers that installed locking devices and “hardening

strips” on existing doors. Cargo carriers voluntarily taking the same action were not eligible for such funding. Now, by this rulemaking, the FAA proposes to make further actions mandatory for both passenger and all-cargo carriers. Therefore, it is the position of the Cargo Airline Association that, to the extent, that any flightdeck door retrofits are made, either pursuant to Government requirement or voluntarily by individual airlines, federal compensation should be available equally to all who take such actions. To limit any available funds to only one segment of the industry would clearly be discriminatory.

In addition, in implementing the Congressional mandates noted above, the FAA clearly intentionally went well beyond the statutory language. Without any opportunity for comment, the agency issued final rules that extended the “rigid door requirements” to all-cargo, as well as passenger, aircraft. If there were no alternatives available to the all-cargo community from a security perspective, we would have no objection and would not be filing any comments. However, we feel strongly that the same security results can be achieved within the cargo operator environment by a new security program that mandates either intense screening of all non-flightdeck personnel or the described flightdeck door retrofit. And this program can be adopted in the normal course of Agency rulemaking, with adequate ability for industry comment.

In expanding the Congressional mandate to all-cargo aircraft, the FAA gives virtually no explanation other than a few conclusory sentences. Accordingly, the Agency finds that “Current regulations do not ensure that a person intent on using an airplane as a weapon would be unable to board all-cargo airplanes”. Concluding that this statement justifies expanding the “rigid door rule” to all-cargo aircraft without even notice and comment, the Agency further goes on to state

that “To the extent that this provision may be seen as exceeding the authority provided by Section 104 to issue this regulation without notice and comment procedures, the FAA finds good cause under 5 U.S.C. 553(b)(3)(B) for not following those procedures on the grounds that addressing passenger carrying airplanes with flightdeck doors would omit a significant number of airplanes **that are similarly situated.**” (Emphasis added). These are the only justifications given by the FAA for including the all-cargo industry in the “rigid door” requirement. There is no explanation of the way the industry operates; no threat assessment; no analysis of current industry initiatives to screen the few “passengers” allowed on board all-cargo aircraft¹; and no basis for concluding that all-cargo aircraft are “similarly situated” (from a security perspective) to passenger counterparts.

Of course, as a practical matter, there are substantial differences between all-cargo aircraft and passenger-carrying aircraft. The most obvious is that the all-cargo industry is in the business of carrying all types of cargo, not passengers. The few “passengers” which might be carried are overwhelmingly company personnel, including pilots, who are jump-seating on company business. Procedures are already in place to screen these individuals to ensure that they are authorized to be aboard the aircraft.

Faced with these substantial differences, the Cargo Airline Association submits that the FAA rule, as it pertains to all-cargo aircraft, is deficient both procedurally and substantively. From a procedural standpoint, no adequate justification has been given for ignoring the requirements of the Administrative Procedures Act (5 U.S.C. 553), which mandate the

¹ Individual all-cargo carriers have, since September 11, instituted new, strict screening methods for all persons allowed on their aircraft.

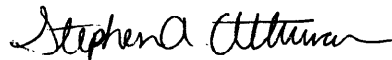
opportunity for notice and comment **before** a rule becomes final – unless such procedure is “impractical, unnecessary or contrary to the public interest”. In this case, the simple statement that all-cargo aircraft are in precisely the same position as passenger aircraft (with respect to cockpit security) is unsubstantiated and, as noted above, clearly incorrect. Accordingly, whatever action is taken in this area must be taken after, not before, public comment. The portion of the rule mandating such changes for all-cargo aircraft should therefore be withdrawn and any all-cargo proposals should be republished as a Notice of Proposed Rulemaking.

With respect to the substance of the rule, as noted above, we believe that this issue should be addressed by the Agency (or TSA) and action appropriate to the risk presented taken. However, it is our position that requiring the retrofit of an entire fleet of aircraft is not the only answer, at least for some of our member operators. For example, an alternative program can be developed for intensive screening of all personnel permitted aboard all-cargo aircraft. This program can be uniform across the industry, or each all-cargo company that transports passengers other than the flightdeck crew can be required to submit their own program for Agency approval. In either case, the industry is willing to work with either the FAA or TSA to arrive at a program acceptable to ensure that all risks in this area are eliminated.

Wherefore, the Cargo Airline Association respectfully requests that the current rulemaking, as it pertains to all-cargo aircraft, be withdrawn, and that a Notice of Proposed Rulemaking be issued soliciting input on the procedures necessary to address the issues raised. This NPRM should focus of the procedures used to screen the relatively few “passengers” carried, and should not necessarily require the expensive and unnecessary retrofit of an entire

fleet of aircraft. In any event, however, any rule ultimately published should make it clear that any costs incurred by all-cargo industry members be eligible for federal funding on the same basis as all other industry segments.

Respectfully submitted,



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APPENDIX A

MEMBERSHIP LIST

ALL-CARGO AIRLINES

- * ABX Air, Inc. d/b/a Airborne Express
- * Atlas Air, Inc.
- * Emery Worldwide
- * Evergreen International Airlines
- * Federal Express
- * United Parcel Service
- Air Transport International
- Capital Cargo International
- DHL Airways, Inc.
- First Air
- Gemini Air Cargo
- Northern Air Cargo
- USA Jet Airlines, Inc.

Seattle, WA
Purchase, NY
Redwood City, CA
McMinnville, OR
Memphis, TN
Louisville, KY
Little Rock, AR
Orlando, FL
Redwood City, CA
Gloucester, Canada
Dulles, VA
Anchorage, AK
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